

## PATENT COOPERATION TREATY

## INTERNATIONAL BUREAU

International Application No. PCT/BR98/00053

Applicant: Celso Martinez, Junior

International Filing Date: 28 July 1998 (28.07.98)

US Patent Application: 09/490,740

US Filing Date: 25 January, 2000

Inventor: Celso Martinez, Jr. Docket No: 3815.01

Title: Roof Waterproofing System Consisting of an Organic Resin Protected by an Aluminum-Copolymer Composite Foil

Commissioner of Patents

ATTN: PCT Legal Administrator

PCT LEGAL OFFICE

Washington, DC 20231

(fax) 703-308-6459

RECEIVED  
13 FEB 2004  
Legal Staff  
International Division

PETITION UNDER 37 CFR 1.181

The Commission is requested to exercise his supervisory authority and instruct the prompt issuance of the above application.

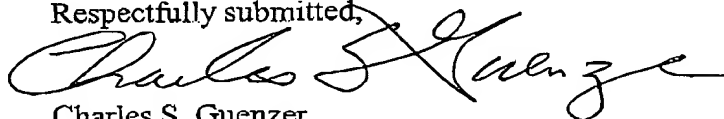
The Issue Fee in this application was paid on November 26, 2001 and the USPTO recorded payment on December 31, 2001. Beginning on June 10, 2002, the undersigned attorney or his assistant participated in approximately 53 telephone contacts or attempted contacts with PTO personnel in an attempt to issue the patent. Those contacts are summarized in the attached listing.

An initial problem, though never evidenced in PTO written communications, was that the USPTO erroneously filed the application under 35 U.S.C. §111 instead of the requested 35 U.S.C. §371. A petition was filed on June 10, 2002 to convert to a §371 filing.

Thereafter, the PTO file was lost at least once. Following a notice of lost file, dated May 2, 2003, Applicant filed a Reconstruction of File on May 2, 2003. This reconstruction filing was repeated on September 25, 2003. It appears that since early November 2003, the file has been held for approval of the petition to convert. We have been unable to obtain a date for decision or for further action.

The extraordinary and unreasonable delay in issuing the patent is affecting the interests and rights of the patentee and has incurred significant unreimbursed costs and time to the undersigned attorney. Prompt issuance of the patent is respectfully requested.

Respectfully submitted,



Charles S. Guenzer

Agent of Record

(tele) 650-566-8040

(fax) 650-566-8042

Date:

13 February 2004

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**Phone Log, Fax Log & E-mail Log**

Date	Time	Reason
6/10/02	11:00am	PCT help desk regarding notice of allowance taking so long. We were informed it had not been filed by the USPTO as a 3.71 filing even though we had requested it on the original application sent in. We were told by Paul Bell to do a Petition Under 37 CFR 1.181 to explain the problem and ask the USPTO to resolve the problem.
6/10/02	11:15am	sent fax to the PCT Legal department that had the Petition Under 37 CFR 1.181.
7/24/02	10:20am	Left a message for Charles Smoot who I was transferred to from the PCT Help desk left a voice mail message asking for a phone call back regarding this case.
7/25/02	11:29am	Sent a fax for Status Request for this case
7/25/02	10:50am	Left a second voice mail message with Charles Smoot.
9/10/02	10:00am	Talked to Paul Bell at the PCT Help Desk and found out that the two previous faxes on June 10, 2002 and July 25, 2002 had not been logged in. And according to the computer these two items had not been logged in. Paul Bell then instructed me to send the two faxes again which I did.
9/20/02	1:15PM	Talked to Paul Bell and found that the faxed materials sent on 9/10/02 had not been logged in again this time Mr. Bell stated that he was hand delivering them to the PCT Legal Department and Logging them in himself.
9/20/02	1:24PM	I faxed the information again and sent it to Paul Bell. This information was sent again by fax to Paul Bell who hand delivered it and logged it in himself.

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10/03/02	10:45am	Left another message with Mr. Charles Smoot asking for him to respond to the above case and problems with getting it dealt with.
10/22/02	12:25pm	Called the PCT help desk and asked for Mr. Charles Smoot's supervisor because he was not returning phone calls and not helping us resolve the problems with the application.
10/22/02	12:30pm	I was put through to Michael Taylor who immediately took down what had happened and told me that he would look into and give me a call back.
10/25/02	11:30am	Left a voice mail message with Michael Taylor asking for a phone call back.
10/25/02	1:16pm	Michael Taylor called back and told me that a Mr. Ho had been placed in charge of this case in the PCT Legal Department and that the file had been sent off to another department and they were having problems finding it. Kathy Short is the supervisor in charge of the department where the file had gone. And he would call her and let me know what was happening.
10/30/02	10:40am	Left a message to call me back either at work or on my cell phone and gave him both phone numbers.
11/4/02	10:15am	Talked to M. Taylor, he said that Kathy Short had implemented a search for the file and reminded me that Mr. Hoe was in charge of the file. Gave me Kathy Short's phone number at the USPTO
11/12/02	11:55am	Left a message with Kathy Short asking for the Status of the missing file and asking for a phone call back.
11/12/02	11:57am	Left a message with Michael Taylor asking if we had reached the end and to please call back because it had almost been a year and we weren't sure what our next recourse was. We thought it might possible be to File a

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Petition with the Commissioner asking for Supervisory Authority.

11/13/02	11:15am	Left message with Mr Taylor asking him to call back.
11/18/02	10:35am	Talked with Katherine Short about missing file. She told me that they had looked at every desk in her area and that they could not find the file. Katherine Short said that even though assigned to her department they did not have it. It is lost.
11/18/02	10:40am	Left a message with Michael Taylor regarding the conversation I had with Katherine Short and that we needed to be told what to do next since the file is lost. We needed to know how to reconstruct file. I told him to please call us so that we can be told what needs to be done and to get this started since we paid the issue fee almost a year ago.
11/20/02	10:20am	Talked with Michael Taylor who told me that Mr. Ho is Working on a Petition to Instruct Us To Reconstruct the case. Mr. Ho will be sending it out in the next day or two. So it should be arriving very soon. So we can do what we need to too resolve case.
11/26/02	9:29am	Left a message with Michael Taylor at PCT Legal regarding the paperwork for the Petition to Instruct Us To Reconstruct the case. Tried to call Mr. Ho, but he did not pick up his phone and he has no voice mail. Asked Mr. Taylor to please call us back because I was unable to leave a voice mail and we have not received paperwork.
12/26/02	10:00am	Carol Bidwell called from USPTO, PCT Legal she is a supervisor and she told CSG on 12/26/02 that they did not show receipt of Status Inquiry or Petition for 1.81. CSG faxed them to her at the USPTO on 12/26/02 and to fax number 703-305-2919. Waiting response still. ICM
2/13/03	10:30am	Left message on 2/13/03 with Carole Bidwell regarding the status of this application. Waiting for a response still. ICM

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2/13/03	12:30pm	Carole Bidwell called back on 2/13/03 and said that she thought that someone else was handling this case. Blaine Copenheaver needs to be called regarding this case at next step in three weeks. ICM
3/13/03	9:55am	Left a message with Mr. Blaine Copenheaver to call back regarding case and status on 3/13/03.
3/14/03	10:30am	Blaine Copenheaver called today and talked to CSG regarding this application. It is now marked lost. The PCT department did a search and were missing 18 files, they found 12 ours was not one of the 12 they found. It has been marked official lost. In two weeks we should hear from the PCT regarding the file status and the person now responsible is Cathy Short in PCT Department. Her phone number is 703-305-3620. ICM
3/31/03	10:45am	Left a message with Catherine Short regarding the steps that had been taken. Our last phone conversation with Blaine Copenheaver told us that there were still 6 files missing after they did the search and that we should hear in two weeks from the person now in charge of our file which is Catherine Short. Regarding the lost file and instructions on what to do. Told Ms. Short to call us back that we needed a response so we could deal with this application. ICM
4/3/03	9:54am	Left a second message with Catherine Short at 9:54AM regarding the steps that had been taken and that we were told by Carol Bidwell and Blaine Copenheaver that the case was going back to her for the paper work to be sent out for the missing file. CSG told me today that if we do not hear from Catherine Short within two weeks he will call Blaine Copenheaver both phone calls have been placed on the docket. Catherine Short for 4/9/03 to ask her to call us back and Blaine Copenheaver so that CSG can call him on 4/17/03. ICM

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4/9/03	9:55am	Called Catherine Short as docketed for today for a second time and found that her voice mail was full.
4/9/03	9:56am	Called Catherine Short's number back to get assistance and see if she was on vacation. I was told that she is not on vacation and she had just stepped into the elevator for lunch. I asked about her getting back to me and I was told she would today.
4/15/03	10:40am	Telecon with Cathy Short. Her worker Donna Greene has worked on it and Cathy will check with her. Some problems with the Palm Expose not being able to process Palm trail because of lost designation. They will go back to group to get paper numbers, etc. Be expecting a photocopy paper. - I think request for Photocopies of papers. I will call back on Wednesday, April 23 <sup>rd</sup> CSG. ICM
4/23/03	10:40am	C. Short sending paperwork
5/9/03	9:56am	Left message with B. Copenheaver
5/9/03	10:15am	Paperwork has it come from the USPTO
5/9/03	11:03am	E-mailed C. Martinez re: status of application
5/14/03	11:30am	Sent Certified Copies to Mail Box Reconstruction
5/27/03	10:15am	Received Postcard for Reconstruction
7/24/03	9:55am	Left message regarding status of application
7/28/03	10:55am	Left second message re: status of application
8/27/03	9:20am	Left message with Catherine Short
9/9/03	10:03am	Unable to Leave Voice Mail with C. Short Mail box full.
9/10/03	11:35am	Left a message for Catherine Short regarding status of application and requesting a phone call back.

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9/25/03	9:30am	2 <sup>nd</sup> package sent and delivered
9/26/03	9:56am	Verbal Confirmation package arrived at USPTO from Landon & Stark.
9/30/03	9:49am	E-mail, and phone Confirmation from Landon & Stark that the package was delivered to C. Short on September 26, 2003.
9/30/03	10:55am	Verbal Confirmation C. Short has package from C. Short.
10/02/03	9:55am	Left C. Short a voice mail requesting a phone call back and inquiring about the status of the package we sent and when it was going to be addressed.
10/08/03	1:20pm	C. Short called CSG and had a teleconference. C. Short was unable to open PAIRS system. She was going to contact Steve Brendell or Charlie Pierson in PCT legal to determine who will act on petition. C. Short was hand carrying this application to PCT Legal.
10/16/03	9:45am	Left message with C. Short asking for status.
11/03/03	10:20am	Left another message with C. Short asking for status
11/6/03	11:03am	Left message with C. Short regarding status
11/12/03	10:03am	Left a third voice mail asking for the status and requesting a phone call back.
11/13/03	10:00am	Told CSG that I had called and left a third message with Catherine Short and asked what he wanted me to do. Told me to call again in about two days.
11/13/03	11:10am	Called the PCT help desk and talked to Mark Regland and found out that the file is with Erin Pender in PCT Legal, it was transferred to her on November 7, 2003. Her phone number is 703-305-0455. The docket lists to call her Monday, November 17, 2003. ICM

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11/17/03	10:35am	Left a message with Erin Pender regarding status of application and paperwork. ICM
12/10/03	10:15am	Left a message with Erin Pender regarding Status of paperwork. ICM
12/15/03	10:03am	Left a message with Erin Pender regarding Status of paperwork. ICM
12/15/03	11:30am	Erin Pender called said we called too much. The file was now out of her office, being reviewed and that she didn't care what happened. That it was now with someone else. And that their workload was very heavy and would it would take a long time. So no estimated time for resolving issues associated with this case.
1/06/04	11:32am	Called the PCT Help Desk and talked to Richard Ross. I was asking if they were able to tell me where the file was And he said that he was unable to determine this with the Information he had available to him. He noticed that the Issue Fee had been paid and he said that he was going to go talk to Erin Pender to find out what was happening with the file and who had it gone to next. Said that he would call back possibly today.
1/12/04	5:35pm	Celso Martinez sent CSG an e-mail asking how much longer would it take to get his a patent issued.
1/13/04	10:45am	Left a message on the PCT Help Desk asking for a phone call back regarding this case and the status. Explained that Richard Ross has said that he would try to get in touch with us and find out where the file was.
1/14/04	10:45am	Debbie from the PCT Help Desk called back and told CSG that the decision was already written by E. Pender and that it went to an Examiner and is awaiting review. No estimated time on this, it may take a while. Debbie said she might look around and see which Examiner has the case for review, but that it was going to take a while. As of 1/16/04 she has not called back. Docketed 02/18/04 as patent issue



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due and has patent been reviewed also for 02/18/04.

1/14/04	12:42pm	Sent Celso Martinez an e-mail that we continue to make numerous phone calls. That a junior examiner had prepared a decision and it was with an examiner awaiting review. Told Celso it may take a while for approval.
1/28/04	10:25am	CSG asked ICM to call PCT Help Desk to see what status of petition was and to see if we could locate who had the file. On the PAIRS System the date of the location was listed on 1/22/04. PCT helpdesk said that they would ask Erin Pender and call us back. ICM
2/11/04	10:25am	Called the PCT Help Desk and talked to Amkur and he said that he would go talk to Erin Pender regarding the status of the petition. He was told that we had to protect our clients interest and that we could not wait any longer. And that we would file the appropriate petition with the PCT Legal Department. He said that he would go talk to Erin Pender and find out who had the case and what the status of the petition was. ICM

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\*\*\* RX REPORT \*\*\*  
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RECEPTION OK

TX/RX NO	6076
RECIPIENT ADDRESS	650 566 8042
DESTINATION ID	
ST. TIME	02/13 12:35
TIME USE	02'56
PGS.	9
RESULT	OK

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